IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9029 of 2004
with
Special Civil Application No. 9586 of 2004
And
Special Civil Application No. 10075 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RANCHHODBHAI DHANJIBHAI PATEL & Ors.

Versus

JAMNABEN D/O DHANJIBHAI NARANDAS AND
W/O BHIKHABHAI & Others.

Appearance:
1. Special Civil Application No. 9029 of 2004
MR PJ VYAS for Petitioner No. 1
M/S THAKKAR ASSOC. for Respondent No. 1-5
MR JAL SOLI UNWALA for Respondent No. 6
MR AMIT V THAKKAR for Respondent No. 7
Mr. KD Pandya, AGP for Respondent No. 8-10

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 17/08/2004

ORAL JUDGEMENT

Rule. Learned advocate Mr. Thakkar waives service of Rule on behalf of respondents No. 1 to 5, ld. advocate Mr. Unwala waives service of Rule on behalf of respondent No.6, ld. advocate, Mr. AV Thakkar, waives service of Rule on behalf of respondent No.7 and learned AGP, Mr., learned AGP, waives service of Rule on behalf of respondents No. 8 to 10. With the consent of all the parties, all these petitions are taken up for final hearing today. As there arises common question of law in similar fact situation in this group of petitions, and also in view of the fact that in all these aforesaid 3 Special Civil Applications the common judgment and order passed by the Secretary (Appeals) with regard to the same Entry is challenged, all these 3 Special Civil Applications are heard together and disposed of together by this common order.

2. In Special Civil Application No. 9029 of 2004, the petitioner Ranchhodbhai Dhanjibhai Patel has challenged legality and validity of the judgment and order dated 25.5.2004 passed by the Secretary (Appeals), Revenue Department, State of Gujarat in Revision Application No. 20 of 2002 in dismissing the same and confirming the order passed by the Collector, Surat dated 20th November 2001 in RTS Appeal No. 25 of 2001 with respect to the Entry No. 1669 dated 17.11.1998 with regard to the land in question.

3. In Special Civil Application No. 9586 of 2004, the petitioner Gabalbhai @ Babubhai Dhanjibhai Patel has challenged the legality and validity of the judgment and order dated 25/29.5.2004 passed by the Secretary (Appeals), Revenue Department, State of Gujarat in Revision Application No. 21 of 2002 in dismissing the same and confirming the order passed by the Collector, Surat, dated 20th November 2001 in RTS Appeal No. 25 of 2001 in respect to entry No. 1669 dated 17.11.1998 with regard to the lands in question.

4. So far as Special Civil Application No. 10075 of 2004 is concerned, the petitioner Nanubhai Dhanjibhai Patel has challenged the legality and validity of the judgment and order dated 29.5.2004 passed by the Secretary (Appeals), Revenue Department, State of Gujarat, in Revision Application No. 92 of 2002 in dismissing the revision application confirming the order passed by the Collector, Surat dated 20th November 2001 in RTS Appeal No. 34 of 2001 with regard to the Entry No. 1669 dated 17.11.1998 in respect of the land.

5. Few facts are necessary for the purpose of determination of the aforesaid Special Civil Applications. Dhanjibhai Naranbhai Patel, father of the petitioners in all the aforesaid Special Civil Applications and the respondents No. 1 to 5 of Special Civil Application No. 9029 of 2004 was the owner of land bearing Survey No. 10, 12, 145, 154, 155, 156/4, 158/4, 160/2, 62, 130/1, 39/2 and Survey No. 33 at Village Altan, Taluka-City, District-Surat. That said Dhanjibhai expired on 9.9.1997 leaving behind him his widow Dahiben, 3 sons (petitioner in each petition) and 6 daughters. It is the case of the petitioners that after the death of Dhanjibhai Narandas Patel by way of family arrangement dated 10th December 1978 the properties of deceased Dhanjibhai were partitioned and as per the said partition/family arrangement it was decided to give land bearing Survey No. 10, 12, 145, 154, 155, 156/4, 158/4, 160/2, 62 and 130/1 to the sons, i.e., petitioners in all these Special Civil Applications. Land bearing Survey No. 39/2 and 33 had gone in the share of Dahiben, widow of Dhanjibhai. It seems that on the basis of the said family arrangement/agreement and after issuing the notice under Section 135-D of the Bombay Land Revenue Code and considering the statements of all the concerned parties, i.e.,sons, daughters and widow, necessary entry being Entry No. 1008 was mutated on 19.6.1980. It is pertinent to note that the said Entry No. 1008 dated 19.6.1980 is not challenged till date. Since as per the family arrangement land bearing Survey No. 33 had gone in the share of Dahiben, widow of Dhanjibhai during her lifetime the said land bearing Survey No. 33 was given to six daughters in the year 1982 and the names of six daughters were mutated in the revenue records and vide entry No. 1189 dated 20th October 1982. It is the case of the petitioners that even with regard to land bearing Survey No. 33 of Altan there was a further family arrangement on 8.3.1986 and as per the said family arrangement/agreement the land bearing Revenue survey No. 33 of Altan came to the share of six daughters and other lands were divided amongst the 3 sons, i.e., petitioners in all the present Special Civil Applications. thus, it is the case of the petitioners that family arrangement/agreement dated 10th December 1978 and dated 8th March 1986 were fully implemented and acted upon by all the heirs of deceased Dhanjibhai Narandas and the respective heirs were put into possession of the lands. As per the family arrangement dated 10th December 1978 the land bearing Survey No. 39/2 and Survey No. 10 were given to Dahiben during her lifetime and on her death the aforesaid lands bearing Survey No. 10 and 39/2 were to

be given to the sons, i.e. petitioners herein. Dahiben died on 31st October 1997 and on her death names of the sons, i.e. petitioners herein came to be mutated into revenue record with regard to lands bearing Survey No. 39/2 and 10 vide entry No. 1669 dated 17.11.1998. It seems that Entry No. 1669 dated 17.11.1998 was objected to by the daughters and objections were submitted by the Mamlatdar, Surat city. The Mamlatdar, Surat city treated the said entry as disputed entry and after considering the objections submitted by the parties passed the order dated 24.5.2000 to certify entry No. 1669 dated 17.11.1998.

5.1. Being aggrieved and dissatisfied with the order passed by the Mamlatdar, Surat city dated 25.4.2000 in RTS Disputed Case No. 3/99 in certifying entry No. 1669 dated 17.11.1998 the petitioner of Special Civil Application No. 10075 of 2004 and his daughters challenged the same before the Deputy Collector, Choryasi Prant, Surat being RTS Appeal No. 32/2000 and RTS Appeal No. 33/2000 respectively. The Deputy Collector, Choryasi Prant, Surat by his judgment and order dated 5.1.2001 dismissed both the appeals confirming the order passed by the Mamlatdar Surat City dated 25.4.2000 in certifying Entry No. 1669 dated 17.11.1998. Being aggrieved and dissatisfied with the judgment and order passed by Deputy Collector, Choryasi Prant, Surat dated 5.1.2001 in RTS Appeal No. 32/2000, Nanubhai Dhanjibhai Patel, petitioner of SCA No. 10075/2004 preferred RTS Appeal No. 34/2001 before the Collector, Surat. The six daughters also challenged the judgment and order passed by the Deputy Collector, Choryasi Prant, Surat, passed in RTS Appeal No. 33/2000 before the Collector, Surat by way of RTS Appeal No. 25/2001. Both the appeals came to be heard and disposed of by the Collector, Surat by his common judgment and order dated 28.11.2001 whereby the Collector partly allowed both the appeals by quashing and setting aside the order passed by the Deputy Collector, Choryasi Prant, Surat dated 5.1.2001 passed in RTS Appeal No. 31/2000 and 32/2001 and also the order passed by the Mamlatdar Surat, dated 24.5.2000 in RTS Disputed Case No. 3/1999 and also entry No. 1669 dated 17.11.1998 and directed to mutate the names of all the heirs of deceased Dahiben Dhanjibhai in the record of rights.

5.2. Being aggrieved and dissatisfied with the judgment and order passed by the Collector, Surat dated 20.11.2001 in RTS Appeals No. 25/2001 and 34/2001, the petitioner of S.C.A. No. 9029 of 2004 preferred revision application No. 20/2002 before the Secretary (Appeals), Revenue Department, State of Gujarat. The

petitioner of SCA No. 9586/2004 also challenged the aforesaid order passed by the Collector, Surat before the State Government by way of Revision Application No. 21/2002. Similarly, the petitioner of SCA No. 10075/2004 Nanubhai Dhanjibhai also challenged the judgment and order passed by the Collector, Surat by way of Revision Application No. 68 of 2002 and 92/2002 before the State Government. Jamnaben, daughter of Dhanjibhai also challenged the order passed by the Collector, Surat dated 20.11.2001 before the State Government by way of Revision Application No. 47/2002. All the aforesaid revision applications came to be heard jointly by the Secretary (Appeals) and the Secretary (Appeals), Revenue Department, State of Gujarat dated 25.5.2004 dismissed all the aforesaid revision applications confirming the order passed by the Collector, Surat dated 20.11.2001 passed in RTS Appeal No. 25/2001 and RTS Appeal No. 34/2001. Being aggrieved and dissatisfied with the judgment and order dated 25.5.2004 passed by the Secretary (Appeals) in the aforesaid revision applications, the respective petitioners have preferred the present Special Civil Applications by which while rejecting the aforesaid revision applications the Secretary (Appeals) has confirmed the judgment and order passed by the Collector, Surat dated 20.11.2001 by which Entry No.1669 dated 17.11.1998 is set aside and it is directed to mutate the names of all the heirs of deceased Dahiben, widow of Dhanjibhai Narandas Patel.

6. Shri PJ Vyas, learned advocate appears on behalf of petitioner in Special Civil Application No. 9029/2004; Shri AV Thakkar, learned advocate appears on behalf of petitioner in SCA No. 9586/2004 and Shri JS Unwala, ld. advocate appears on behalf of petitioner in SCA No. 10075/2004. Shri Navin Pahwa, learned advocate appears on behalf of six daughters in all the aforesaid Special Civil Applications.

7. The learned advocates appearing on behalf of the petitioners have jointly submitted that the judgment and order passed by the Secretary (Appeals, Revenue Department, State of Gujarat dated 25/29.5.2004 in aforesaid revision applications confirming the order passed by the Collector, Surat dated 20.11.2001 in RTS Appeal No. 25/2001 and 34/2001 in setting aside entry No. 1669 dated 17.11.1998 and further directing to mutate the names of all the heirs of deceased Dahiben in the revenue records with regard to lands in question are absolutely illegal, contrary to the evidence on record and without jurisdiction on the following amongst other

grounds;

(1) Family arrangement/agreement dated 10th December 1978 was acted upon and necessary entry was also made being Entry No. 1008 dated 19.6.1980 after considering the statements/reply submitted by all the parties,i.e. all the sons and daughters and Dahiben and after following necessary procedure under Section 135D of the Bombay Land Revenue Code and the said entry is not challenged.

(2) Vide Entry No. 1189 dated 20th October 1982 the names of six daughters were mutated in revenue records with regard to land of Survey No. 33 of Altan. Thus, the following arrangement/agreement dated 10th December 1978 is implemented and acted upon.

(3) No efforts were made by the daughters to get their names in the record of rights as heirs of deceased Dhanjibhai Narandas Patel. After the death of Dhanjibhai Narandas who has died on 9.9.1997 and after a period of 18 years the daughters had come out with the case to have their shares in all the lands in question which were of the ownership of the deceased Dhanjibhai Narandas Patel.

8. The Collector, Surat, has materially erred in deciding the disputed question of title and the legality and validity of the family arrangement/agreement while exercising RTS proceeding and in view of the pendency of Special Civil Suit No. 65 of 2001 pending in the Court of learned Civil Judge (SD), Surat filed by all the six daughters praying for partition of all the lands of the deceased Dhanjibhai, till outcome of the said special civil suit the Collector ought not to have passed an order for including the names of all the heirs of deceased Dahiben into the record of rights.

9. On the other hand, Shri Navin Pahwa, learned advocate appearing on behalf of the six daughters had tried to support the judgment and order passed by the revisional authority as well as the order passed by the Collector, Surat by quashing and setting aside the Entry No. 1669. He has submitted that all the daughters have equal share in the property of deceased Dhanjibhai and therefore the Collector, Surat has rightly passed an order of mutating the names of all the heirs in the record of rights. He has further submitted that at the

time when Entry No. 1008 was made necessary procedure as required under Section 135D of the Bombay Land Revenue Code was not followed and no notices were served upon the daughters. He has further submitted that in view of pendency of the Special Civil Suit No. 65 of 2001 in the Court of learned Civil Judge (SD), Surat whatever in the entry may be continued as per the order passed by the Collector, Surat and an order may be passed that the said Entry will be subject to the ultimate outcome of the aforesaid Special Civil Suit No. 65 of 2001 and therefore requested to dismiss all the aforesaid three Special Civil Applications.

10. Heard the learned advocates appearing on behalf of the parties. What is emerging from the aforesaid facts is that Dhanjibhai Narandas Patel was the owner of all the aforesaid lands in question. He died on 9.9.1977 leaving behind him his widow Dahiben, 3 sons and 6 daughters. After the death of Dhanjibhai Narandas Patel, there is a family arrangement/agreement dated 10th December 1978 and land bearing Survey No. 17, 145, 154, 155, 156/4, 158/4, 160/2, 62 and 130/1 had gone in the share of aforesaid 3 Sons and the land bearing Survey No. 10, 39/2 and 33 had gone in the share of Dahiben, widow of Dhanjibhai. From the family arrangement dated 10th December 1978, it seems that the land bearing Survey No. 33 was given to Dhanjibhai as an absolute owner and land bearing Survey No. 10 and 39/2 were given to Dahiben for life time and it is so provided in the family arrangement that after her death the aforesaid 3 sons will become the owners of the aforesaid 2 survey numbers. On the basis of the aforesaid family arrangement necessary entry was also made by Entry No. 1008 dated 19.6.1980. From the bare reading of Entry No. 1008 dated 19.6.1980 it seems that notices were given to all the aforesaid parties, i.e., all the sons and daughters and Dahiben under Section 135D of the Code and the statement of all the aforesaid persons were recorded and thereafter entry No. 1008 dated 19.6.1980 is mutated. It is also pertinent to note that the said entry No. 1008 dated 19.6.1980 is unchallenged till date. Vide Entry No. 1008 dated 19.6.1980 all the daughters seem to have agreed and had not raised any objection. That thereafter vide Entry No. 1189 dated 20th October 1982 the names of six daughters were mutated in the revenue records with regard to land bearing Survey No. 33 of Altan as Dahiben during her life time had given the aforesaid land bearing Survey No. 33 to all the six daughters and all the aforesaid six daughters have become absolute owners of the land Survey No. 33. At that time also, the daughters have not challenged the family arrangement dated 10th December

1978 and even no efforts were made to mutate their names in the revenue records with regard to all the aforesaid lands as heirs of deceased Dhanjibhai who died in the year 1977. Dahiben died on 31.10.1997 and as per the family arrangement dated 10.12.1978 on the death of Dahiben 3 sons became absolute owners of land bearing Survey No. 10 and 39/2 and necessary entry No. 1669 was mutated on 10/17.11.1998 which was objected by the daughters for the first time by alleging inter alia that they are the heirs of deceased Dhanjibhai and deceased Dahiben and they have also equal share in the land in question. It is pertinent to note at this stage that Entry No. 1669 dated 17.11.1998 was with regard to Survey No. 39/2 and Survey No. 10 only and not with regard to other lands. Thus, the daughters have challenged and have claimed their right/share in respect to the land bearing Survey No. 39/2 and Survey No. 10 only and thereafter the aforesaid proceedings have taken place and ultimately the Collector set aside Entry No. 1669 and directed to mutate the names of all the heirs of deceased Dahiben into the revenue records with regard to Survey No. 39/2 and Survey No. 10 by accepting that the daughters have share in the land bearing Survey No. 39/2 and Survey No. 10 being heirs of Dahiben, widow of Dhanjibhai. It is also pertinent to note that Nanubhai Dhanjibhai, one of the sons, and six the daughters came out with the case that in fact deceased Dhanjibhai had executed a Will dated 14th January 1976 and therefore the name of all the heirs were required to be mutated into the record of rights and the same was not produced while making the entries No. 1008 and 1189. The said Will is disputed by other two sons. However, considering the family arrangements dated 10th December 1978, the share which was given in favour of Dahiben is considered to be the absolute ownership of Dahiben Dhanjibhai and therefore the Collector, Surat, passed an order that as Dahiben has died without executing any Will the names of all the heirs are required to be entered into with regard to the lands in question for which Entry No. 1669 dated 17.11.1998 was mutated. Thus, it seems that the Collector, Surat, has prima facie accepted the family arrangement dated 10th December 1978. However, from the bare reading of the family arrangement dated 10th December 1978 the lands bearing Survey No. 10 and 39/2 were given to Dahiben and/or had gone in favour of Dahiben only for life time and it is so provided in the family arrangement that after the death of Dahiben the 3 sons would become the owners of the aforesaid lands bearing Survey No. 10 and 39/2. Therefore, prima facie, the Collector was not right in holding that deceased Dahiben Dhanjibhai has become absolute owner of the lands

in question by entry No. 1669 dated 17.11.1998. From the facts stated hereinabove and Entry No. 1008 and Entry No. 1189 being unchallenged and family arrangement dated 10th December 1978 is acted upon, the Collector, Surat was not justified in setting aside Entry No. 1669 dated 17.11.1998 with regard to the lands bearing Survey No.10 and 39/2 situate at Village Altan and considering the dispute with regard to the Will and the dispute with regard to the family arrangement and pendency of Special Civil Suit No. 65/2001 filed by the daughters for their shares, the Collector, Surat, instead of directing to mutate the names of all the heirs of deceased Dahiben in the record of rights, ought to have relegated the parties for filing a civil suit, and ought to have waited till the outcome of the Special Civil Suit No. 65 of 2001 pending in the Court of learned Civil Judge (SD), Surat, by further considering the fact that Dhanjibhai died in 1977 and till 1998-1999 no efforts were made by the daughters to ascertain their shares in the lands in question as heirs of deceased Dhanjibhai and even otherwise considering the fact that the entry in the revenue records is only for fiscal purpose and for presumptive value and it is made only for the purpose of collection of revenue and ipso facto does not confer any right, title or interest in favour of a person in whose favour the entry is made and the same is always subject to ultimate outcome of the civil suit. Considering the aforesaid facts and circumstances, while quashing and setting aside the judgment and order passed by the Secretary (Appeals, Revenue Department, State of Gujarat dated 25.5.2004 in Revision Applications No. 20/2002, 21/2002, 47/2002, 68/2002 and 92/2002 and also, quashing and setting aside the order passed by the Collector, Surat dated 20th November 2001 passed in RTS Appeal No. 25/2001 and 34/2001 and confirming the Entry No. 1669 dated 17.11.1998, if following directions are issued, it will meet the ends of justice;

(i) Entry No. 1669 dated 17.11.1998 would be only for a presumptive value and fiscal purpose and for the purpose of payment of revenue and the same will be subject to the ultimate outcome of the Special Civil Suit No. 65 of 2001 pending in the Court of learned Civil Judge (SD), Surat;

(ii) The aforesaid observations and the finding by me in the aforesaid Special Civil Applications are to be treated only for the purpose of deciding the legality and validity of Entry No. 1669 dated 17.11.1998 and the same will be subject to the ultimate outcome and findings that may be

given by the trial Court in Special Civil Suit No. 65 of 2001 pending in the Court of learned Civil Judge (SD), Surat;

(iii) The Mamlatdar, Surat, is directed to make an entry in the revenue record with regard to the land bearing Survey No. 10 and 39/2 situate at Village Altan also with regard to pendency of Special Civil Suit No. 65/2001 in the Court of learned Civil Judge (SD), Surat.

11. For the reasons stated hereinabove and subject to the aforesaid directions, all the three petitions succeed. The judgment and order passed by the Secretary (Appeals) dated 25.5.2004 passed in Revision Applications No. 20/2002, 21/2002, 47/2002, 68/2002 and 92/2002 and also the judgment and order passed by the Collector, Surat dated 20th November 2001 in RTS Appeal No. 25/2001 and 34/2001 and confirming the Entry No. 1669 dated 17.11.1998, are hereby quashed and set aside. The Entry No. 1669 dated 17.11.1998 is restored subject to the aforesaid directions and conditions. The Mamlatdar, Surat city is directed to also make an entry in the revenue records with regard to land bearing Survey No. 10 and 39/2 to the effect that the Special Civil Suit No. 65 of 2001 is pending in the Court of learned Civil Judge (Senior Division), Surat.

12. Rule is made absolute to the aforesaid extent in all the aforesaid three Special Civil Applications with no order as to costs.

rmr. [M.R. Shah, J.]